



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2013

Ms. Kerri L. Butcher
Chief Counsel
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2013-16285

Dear Ms. Butcher:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 500878.

The Capital Metropolitan Transportation Authority (the "authority") received a request for thirty-nine categories of information pertaining to a specified incident. You inform us you will release some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, you inform us the authority asked the requestor to clarify items 6, 17, 24, 32, and 35 of his request. *See* Gov't Code § 552.222 (if request for information is unclear,

¹Although you also claim the submitted information is excepted under sections 552.301(a) and 552.303 of the Government Code, these provisions are not exceptions to disclosure. Rather, these sections specify certain requirements a governmental body must follow when requesting a ruling from this office. *See* Gov't Code §§ 552.301(a), .303.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). We understand the authority has not received a response to the request for clarification. Therefore, the authority is not required to release any responsive information for which it sought clarification. But if the requestor responds to the clarification request, the authority must seek a ruling from this office before withholding any responsive information from the requestor. *See Gov't Code* § 552.222; *City of Dallas*, 304 S.W.3d at 387.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Gov't Code* § 552.101. This section encompasses information made confidential by other statutes. You raise section 552.101 in conjunction with section 418.181 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.181 provides, "Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism." *Id.* § 418.181. *See generally id.* § 421.001 (defining critical infrastructure to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation"). The fact that information may relate to a governmental body's security measures does not make the information *per se* confidential under the Texas Homeland Security Act. *See Open Records Decision No. 649 at 3* (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under section 418.181 must be accompanied by an adequate explanation of how the responsive records fall within the scope of the claimed provision. *See Gov't Code* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

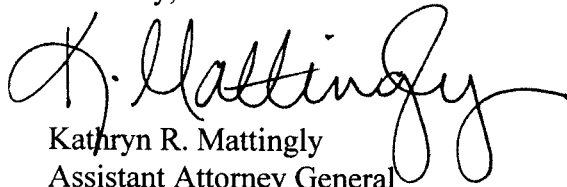
You state the submitted information consists of documents, drawings, and operations manuals that "depict the technical specifications and programming calculations for electrical and other technical and operational components of the rail cars[.]" You also state some of this information identifies the schematics and operational mechanics of internal and external components of the rail cars, and other information consists of inspection and maintenance records that would identify vulnerabilities of the rail cars and the rail car system. You argue release of this information could allow an individual to operate, commandeer, disable, or sabotage the rail cars. Upon review of the arguments and the information at issue, we find the authority has demonstrated the rail cars constitute critical infrastructure, and the submitted information identifies the technical details of particular vulnerabilities of that critical infrastructure to an act of terrorism. Therefore, the authority must withhold the

submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Mattingly', with a stylized flourish extending from the end.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 500878

Enc. Submitted documents

c: Requestor
(w/o enclosures)